



Bureau of HIV and STD Prevention

HIV/STD Clinical Resources Division
HIV/STD Epidemiology Division
HIV/STD Health Resources Division

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HIV/STD Policy No. 500.002

ENVIRONMENTAL TOBACCO SMOKE CONTRACTOR ASSURANCE

PURPOSE

In accordance with section 1043(d) of the Pro-Children Act of 1994, the Texas Department of Health (TDH), Bureau of HIV and STD Prevention (Bureau), shall adopt and enforce the Public Law prohibitions restricting smoking in certain indoor facilities. In this regard, the Bureau shall require all contractors to sign an assurance of compliance with the Pro-Children Act of 1994. Any agency designated to receive funds from the Bureau to provide HIV/AIDS/STD services will be required to sign the assurance, ***Assurance Regarding Environmental Tobacco Smoke***, prior to execution of the contract.

AUTHORITY

The Pro-Children Act of 1994 (20 U.S.C. 6081-6084), hereafter referred to as "the Act," was enacted on March 31, 1994, as sections 1041 through 1044 of Public Law 103-227, the "Goals 2000: Educate America Act." The Act became effective December 26, 1994. The purpose of this Act is to protect children under the age of 18 from exposure to environmental tobacco smoke when receiving education, library services, day care, health care, and early childhood development services in indoor facilities (including WIC and Head Start.) The Act seeks to achieve this goal by requiring persons that provide children's services in indoor facilities to prohibit smoking in such facilities if they are regularly or routinely used for the delivery of those services. Similar prohibitions apply to federal agencies that provide those services to children.

DEFINITIONS

"Person" is defined in section 1042(3) of the Act as:

any State or local subdivision thereof, agency of such State or subdivision, corporation, or partnership that owns or operates or otherwise controls and provides children's services or any individual who owns or operates or otherwise controls and provides such services.

"Children's services" is defined in section 1042(2) as:

the provision on a routine or regular basis of health, day care, education or library services -

- (A) that are funded, after the date of enactment of this Act, directly by the Federal Government or through State or local governments, by Federal grant, loan, loan guarantee, or contract programs

- 1 (i) administered by either the Secretary of Health and Human Services
- 2 provided and funded solely under titles XVIII and XIX of the Social
- 3 Security Act); or
- 4 (ii) administered by the Secretary of Agriculture in the case of a clinic
- 5 (as defined in 7 CFR 246.2) under section 17(b)(6) of the Child
- 6 Nutrition Act of 1966 (42 U.S.C. 1786(b)(6)), or
- 7 (B) that are provided in indoor facilities that are constructed, operated, or
- 8 maintained with such Federal funds, as determined by the appropriate
- 9 Secretary in any enforcement action under this title. Except that nothing in
- 10 clause (ii) of subparagraph (A) is intended to include facilities (other than
- 11 clinics) where coupons are redeemed under the Child Nutrition Act of
- 12 1966.

14 PROHIBITIONS, THE PRO-CHILDREN ACT OF 1994

16 The Secretary of Health and Human Services, in consultation with other affected
 17 agencies, published the following prohibitions in the **Federal Register** (Vol. 59, No. 250,
 18 Dec. 30, 1994, 67713).

20 1. Persons That Provide Children's Services

- 22 a. No person shall permit smoking within any indoor-facility owned or leased
- 23 or contracted for and utilized by such person for provision of routine or
- 24 regular kindergarten, elementary, or secondary education or library
- 25 services to children.¹
- 26 b. No person shall permit smoking within any indoor facility (or portion
- 27 thereof) owned or leased or contracted for by such person for the
- 28 provision by such person of regular or routine health care or day care or
- 29 early childhood development (Head Start) services to children or for the
- 30 use of the employees of such person who provide such services, except
- 31 that this shall not apply to:
- 32 (i) any portion of such facility that is used for inpatient hospital
- 33 treatment of individuals dependent on, or addicted to, drugs or
- 34 alcohol; and
- 35 (ii) any private residence.

37 2. Federal Agencies That Provide Services to Children

- 39 a. No Federal agency shall permit smoking within any indoor facility in the
- 40 United States operated by such agency, directly or by contract, to provide
- 41 routine or regular kindergarten, elementary, or secondary education or
- 42 library services to children.
- 43 b. No Federal agency shall permit smoking within any indoor facility (or
- 44 portion thereof) operated by such agency, directly or by contract, to
- 45 provide routine or regular health or day care or early childhood

development (Head Start) services to children, except that this shall not apply to:

- (i) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and
- (ii) any private residence.

- c. The provisions of paragraph (b) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (b) not subject to paragraph (a).

ASSURANCES

The TDH requires all agencies contracting with the Bureau, who provide HIV/AIDS/STD services, to provide assurance of compliance with the Act. The assurance, ***Assurance Regarding Environmental Tobacco Smoke***, must be signed and on file with the TDH prior to the execution of any contract.

By signing this assurance, the offeror/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization agrees that it will require that the language of this assurance be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

EXCEPTIONS

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

PENALTY

The Act provides civil penalties for each violation and for the issuance of administrative compliance orders. Each day a violation continues constitutes a separate violation. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

DATE OF LAST REVIEW:

November 13, 2002 Converted format from WordPerfect to Word.

Assurance Regarding Environmental Tobacco Smoke

Public Law 103-227, also known as the Pro-Children Act of 1994 (the Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health care, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this assurance, the offeror/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization agrees that it will require that the language of this assurance be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

By signing this form, applicant/grantee agrees to abide by the requirements of the assurances stated herein.

Name of Organization

Name/Title of Authorized Representative

Signature of Authorized Representative

Date